IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2791 OF 1989

Indian Overseas Bank, a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 having their Central Office at 762, Anna Salai, Madras-600 002 and branch office at Juhu, Bombay- 400 049. ... Plaintiffs.

V/s.

1. Indian Engineers, a partnership firm duly registered under the provisions of Indian Partnership Act, 1932 having their office at Jeevan Jyot, Plot No.32, II North South Road, JVPD Scheme, Vile-Parle (West), Bombay- 400 056 and also at C/o. Swastik Paper Industries, Sewri Cross Road, Sewri, Bombay- 400 015.

2. Harshad Bhagubhai Patel, Indian Inhabitant of Bombay, residing at Jeevan Jyoti, 3rd Floor, Plot No.32, Juhu Vile-Parle Development Scheme, Vile-Parle (West), Bombay- 400 056.

3. Kiran Bhagubhai Patel, Indian Inhabitant of Bombay residing at 88, Alka Puri, Baroda, Gujarat. ... Defendants.

Mrs.S.S.Ayyar i/b. M/s.Ayyar & Co.
for the plaintiffs.

None for the defendants.

CORAM: V.C.DAGA, J.

DATED: 21st November 2007.

JUDGMENT :

. The plaintiff- Indian Oversea Bank is constituted, established and functioning under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 ("said Act" for short) having their central office at 762, Anna Salai, Madras- 600 002 and one of its branch office at Juhu, Mumbai ("Bank" for short).

Factual Matrix :

2. The bank has filed this suit against the defendants on the following factual matrix:

3. The defendant No.1 is a partnership firm carrying on business of trade, manufacture and fabrication work of various engineering goods. Defendant Nos.2 and 3 are its partners.

4. On being applied by the defendants, plaintiff- Bank has made available cash credit facility to defendant No.1, who, in turn, executed loan documents in favour of the plaintiff- Bank such as promissory note in the sum of Rs.1,50,000/- dated 6th September, 1986 promising to pay the said amount

with interest thereon at the rate of 6.5% per annum over Reserve Bank of India rate with a minimum of 16.5% per annum from the date of promissory note till full and final payment with quarterly rests. In addition to the said promissory note, defendant No.1 has also executed letter of hypothecation of goods dated 6th September, 1986 and hypothecated thereunder the stock-in-trade together with finished; semifinished goods and stock-in-process. The defendant No.2 executed letter of guarantee in favour of the plaintiff- Bank on the same date. He also assigned his life insurance policy in favour of the Bank to secure outstanding dues of the Bank.

5. The defendant No.1 opened account with the plaintiff - Bank being Account No.557 and availed said financial facility through the said bank account. Defendant Nos.2 and 3 also executed various other loan documents in favour of the Bank and also pledged their National Savings Certificates having total face value of Rs.14,000/-, the particulars of which are to be found in para-6 (wrongly mentioned as para-5) of the plaint.

6. The loan account of defendant No.1 became sticky and stagnant. Consequently, Bank entered

into the correspondence requesting the defendants to regularise their loan account. The defendants promised to regularise the same but failed to keep their promise. With the result, the amount of loan was recalled by the Bank by demand notice dated 5th November, 1988. Since the defendants failed to comply with the demand notice, the plaintiff- Bank has filed present suit for recovery of their outstanding dues in the sum of Rs.2,05,249.01 on 5th September, 1989.

7. On being summoned, the defendants appeared and filed their written statement; wherein they admitted having opened loan account with the plaintiff- bank and also admitted having signed loan documents but denied the contents thereof contending that their signatures were obtained on the blank documents and the loan documents were subsequently filled in to file the present suit.

Issues for Determination :

8. Considering rival pleading, issues were framed on 30th August, 2007 reading as under:

ISSUES	FINDINGS
1. Whether the Plaintiffs proves that the Defendants be jointly and severally ordered to pay the sum of Rs.2,05,249.01 with	Yes.

	further interest thereon @ 16.5% per annum with quarterly rest from the date of filing of the suit till payment ?	
2.	Whether the Plaintiffs proves that the goods described in Exhibit-'B' were validly hypothecated by the Defendant No.1 with the Plaintiffs as and by way of security repayment towards the Plaintiffs' claim?	Yes.
3.	Whether the Plaintiffs have realised any amount (i) in respect of LIC Policy and National Saving Certificates referred in Exh.'D' to the Plaint and (ii) from O.N.G.C. pursuant to Authority Letter executed by the Defendant No.1 which is referred in para 10 of the Written Statement of the Defendant Nos. 1 and 2 and Whether the Plaintiffs are liable to compensate the Defendant No.1 for any loss suffered by Defendant No.1 in this respect ?	
4.	Whether the Defendant No.2 in his individual capacity guaranteed repayment of amount payable by the Deft. No.1 to Plaintiff ?	Yes.
5.	Whether the Defendants proves that they were not agreed to pay any amount towards the guarantee fee to the Plaintiffs ?	No.
6.	Whether the Defendants prove that they are not bound and liable to pay the sum of Rs.1,61,985.19 outstanding in their cash credit account towards the Plaintiffs' dues?	No.
7.	Whether the Defendants proves that the Plaintiffs claim is not valid and subsisting and	No.

they are not bound and liable to pay the same ?	
8. What Order ?	As per the final order.

Evidence :
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9. After having framed the aforesaid issues, plaintiff was called upon to file affidavit of evidence and documents, which the plaintiff has filed. The affidavit is duly affirmed by one Ramnathan Subramani, Senior Manager of the plaintiff- Bank. The plaintiff has produced 12 documents along with list of document together with the copy of the power of attorney by the plaintiff-Bank in favour of Mr.Ramnathan. The plaintiff has also produced statement of account duly certified under the Bankers Books of Evidence Act and has also produced on record the statement showing part payments of the amounts made by the defendants from time to time, details of which are as under:

On 13th December, 1991	-	Rs.15,000/-
On 10th January, 1002	-	Rs.10,000/-
On 26th March, 1992	-	Rs.35,000/-
On 30th June, 1992	-	Rs.20,000/-
On 9th January, 1993 (By way of proceeds of NSC)	-	Rs.28,210/-

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Rs.1,08,210/-

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10. The defendants chose to remain absent. Nobody appeared on behalf of the defendants.

11. With the above evidence on record, arguments were heard.

12. The burden of issue Nos.5, 6 and 7 lies on the defendants. They did not lead any evidence. As such, issue Nos.5, 6 and 7 can be answered against the defendants for want of evidence.

13. So far as issue Nos.1 to 4 are concerned, the burden of which lies on the plaintiff. They have been proved by the plaintiff based on the contents of the extracts of account corroborated by oral evidence of the plaintiff- Bank. (See **State Bank of India v. Yumnam Gouramani Singh**, AIR 1994 SC 1644)

14. The defendants have not denied execution of promissory note executed by defendant Nos.1 and 2 on 6th September, in favour of the plaintiff- Bank

together with other loan documents. The defendants in the written statement only alleged that at the time when these documents were executed they were blank. The burden to prove that those documents were blank was on the defendants. Defendants neither filed any counter affidavit nor entered into witness box to prove their contention. Hence all the loan documents stand proved by virtue of the admission on the part of the defendants. Even otherwise, under order VIII rule 5 of Code of Civil Procedure, 1908 ("C.P.C." for short) it was expected on the part of the defendants to specifically deny their liability. None of the documents have specifically denied by the defendants. Under these circumstances, these documents are deemed to have been admitted. Consequently, issue Nos.1 to 4 are answered in favour of the plaintiff.

15. In the above view of the matter, suit filed by the plaintiff- Bank is liable to be decreed in toto. Hence the following order:

ORDER

(i) The suit is decreed in terms of the prayer clauses incorporated in the

plaint.

(ii) The defendants do jointly and severally pay Rs.2,05,249.01 subtracting the amount paid by them from time to time in the sum of Rs.1,08,210/-, with interest on the decretal amount i.e. suit claim calculated thereon from the date of suit till payment or part payment thereof at the rate of 12% per annum with costs.

(iii) Decree be drawn in terms of this order.

(V.C.DAGA, J.)